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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Application by Ameritech Michigan	)	
For Authorization Under Section 271 of the	)	**CC Docket No. 97-137**
Communications Act to Provide In-Region	)	
InterLATA Service in the State of Michigan	)	

COMMENTS OF AT&T CORP. IN OPPOSITION TO AMERITECH'S SECTION 271 APPLICATION FOR MICHIGAN

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AT&T Corp. ("AT&T") respectfully submits this opposition to the application of Ameritech Michigan ("Ameritech") for authorization to provide interLATA services originating in Michigan.

INTRODUCTION

Earlier this year, Ameritech filed two separate Section 271 applications for Michigan. Each was obviously premature, and each was subsequently withdrawn. Now, Ameritech again contends that it has satisfied Section 271's requirements in Michigan. It again states (Br., pp. 4, 55) that it has taken all the "steps that Congress and the Commission concluded" are required for effective local service competition, that it is "ready, willing and able" to respond to competitors' orders, and that "the door, therefore, has been opened wide to local exchange competition in Michigan." It also again states (id., pp. 87-88) that it would be "futile" for it even to attempt to violate its obligations because "detection and punishment of that conduct would be swift and inevitable," and thus, Ameritech again asserts, it cannot now "reap even short-term rewards for any anticompetitive behavior."

These contentions are again premature. Although Ameritech has made welcome progress -- and far more in some areas than any other BOC -- toward implementing the requirements of

the Act, it has not yet fully implemented the competitive checklist in Michigan. Indeed, in many instances, it has simply defied -- and improperly re-defined -- its legal obligations under Section 251(c) of the Act and the express terms of the Commission's implementing regulations. As a result, there remains no significant local competition in Michigan today.

For more than a year, AT&T has been working feverishly to enter the Michigan market through each of the three entry vehicles that are authorized by Section 251(c) -- facilities, unbundled network elements ("UNEs"), and resale. But Ameritech has foreclosed AT&T's entry except through resale, a form of entry which does not permit AT&T to offer competitively significant alternatives to Ameritech's services and which protects Ameritech's existing monopoly profits. Beyond that, Ameritech has sharply limited even this resale competition by not yet providing the non-discriminatory and consistently reliable electronic access to operations support systems that must exist before AT&T or any other carrier could provide competitively significant volumes of services even as a reseller.

These facts and the prematurity of this application are most starkly illustrated by Ameritech's refusal to provide the "UNE-platform." The UNE-platform is a combination of unbundled network elements at cost-based rates -- the loop, network interface device, switch, shared transport, signaling and call related databases, and tandem switches. AT&T has repeatedly sought to purchase these elements and combine them with AT&T's own operator services and directory assistance (OS/DA) centers to provide local exchange service in Michigan. As Ameritech recognizes, combinations of UNEs, unlike resale, allow CLECs to deploy competitive alternatives to Ameritech's services that can eliminate Ameritech's monopoly profits and create lower prices for consumers in the near term. These aspects of the UNE-platform have taken on even greater significance since the Commission's Access Charge Reform order,

which relies heavily on market-based access reform.[1] Of all entry vehicles, only the UNE-platform offers any prospect for near-term success of such reform. Perhaps not surprisingly, Ameritech has refused to provide these UNE combinations, in defiance both of this Commission's rules and of the parallel determinations of its state commissions.

For one thing, Ameritech has refused to provide shared transport -- a crucial element of the platform -- as a network element at the per-minute TELRIC rates that the Local Competition Order requires.[2] Instead, Ameritech will offer shared transport only as a "service" at radically higher rates. Further, under Ameritech's theory, it could unilaterally refuse to offer even this inadequate arrangement, for if shared transport is not a network element, nothing in the Act would prevent Ameritech from withdrawing that critical offering from the market entirely.

Ameritech has also refused to permit purchasers of the unbundled switch to collect access revenues, even though here, too, the Local Competition Order (¶ 363 n.772) could not make it clearer that Ameritech is required to do so. And Ameritech has consigned AT&T's repeated requests for Commission-mandated OS/DA routing to a "bona fide request" quagmire. As a result of Ameritech's intransigence, the UNE-platform cannot be ordered in Michigan today. That is also the sole reason why no CLEC is today obtaining unbundled switching. Compare Ameritech Br., pp. ii, 21, 36, 46.

In light of this record, it is incredible that Ameritech would claim (Br., p. 4 n.5) that it is complying with all the Commission regulations "as adopted," including the pricing rules that have been stayed by the Eighth Circuit only insofar as they would bind states in conducting

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[1] First Report and Order, Access Charge Reform, CC Docket No. 96-262 (rel. May 16, 1997).

[2] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, ¶¶ 439-451, 672-703 (rel. Aug. 8, 1996) ("Local Competition Order").

arbitrations under § 252. Ameritech is violating the Commission's non-pricing rules, and it has not demonstrated that it will comply with the pricing regulations.

For these reasons, it is also ironic that Ameritech would argue at length (Br., pp. 18-21) that the statutory requirement that it "provide" checklist items should be deemed satisfied by a BOC's mere "offer[ring]" of those items when no competitor "elect[s] to purchase" a particular item "through no fault of the BOC." While Ameritech's statutory analysis is erroneous, it is here irrelevant. The problem in Michigan is not that competitors are declining to order facilities that are available, but rather that the repeated efforts of AT&T and others to place UNE orders have been persistently refused.

Ameritech has sought to obscure the significance and impact of its non-compliance by promising to "true-up" its shared transport rates and access charges if the Commission reaffirms the pertinent aspects of the Local Competition Order on reconsideration, and to conduct a trial of the operational readiness of the platform. However, these two promises underscore both that Ameritech is violating the Act and that this application is premature. Indeed, Ameritech maintains that it will not even "begin" some of the necessary development work for the UNE-platform until the Commission issues a reconsideration order, and will not "implement" the result of that work until its appeals of that order are fully exhausted. See Kocher Aff., ¶ 78.

The proposed "true-up" is thus based on the false premise that Ameritech somehow need not provide shared transport as a network element on a per-minute basis, or permit CLECs to use the unbundled switch in the provision of access services, unless and until the Commission reaffirms these requirements in a reconsideration order. The Commission regulations that already impose these duties have the force of law, however, and are thus requirements of the competitive checklist unless and until they are changed. Indeed, this is not the only time

Ameritech has refused to obey binding and effective orders on the ground that it wants to relitigate their correctness. Ameritech also did so when it refused to obey the Michigan Public Service Commission's ("MPSC's") orders to implement intraLATA toll dialing parity in Michigan. These actions are abuses of the regulatory and litigation processes that are devastating to new entrants, who depend upon timely and certain adherence to regulations for the execution of their business plans and who bear the substantial costs of Ameritech's tactics of delay. It underscores the wisdom and necessity of requiring actual irreversible implementation of each checklist item.

Further, even if Ameritech had now agreed to test the operational readiness of the UNE-platform, that would only confirm that the platform has not yet been implemented and that the instant application is premature by its terms. However, there has been no such agreement. AT&T and Ameritech have not agreed on test parameters beyond a preliminary first phase -- a phase which not even Ameritech contends will demonstrate operational readiness.

As a result of Ameritech's foreclosure of competition through UNEs, AT&T has been forced to rely solely on total service resale. Even for this limited form of entry, however, significant systems problems persist. While some progress has been made in recent months as a result of pressure from state regulators, Ameritech still has not adequately automated communications between its "front-end" gateway and its "back-end" OSS legacy systems. As a consequence of these and other problems, Ameritech's processing of CLEC resale orders remains dependent on manual intervention. The result has been major snafus, such as orders being held up for months and customers being double-billed. The history of Ameritech's OSS efforts confirms that these problems will be resolved only if Ameritech continues to face

pressure from regulators and only if completion of its OSS responsibilities is a condition precedent to authorization under Section 271.

Moreover, Ameritech's efforts to downplay these serious problems is particularly ironic in light of the aggressive "testing" program it has apparently instituted for providing long-distance service. Ameritech is currently providing residential long-distance service to its employees as a "trial," and it claims this trial is necessary to ensure that, if and when it obtains long-distance authority, it can immediately process 20,000 orders a day. Ameritech has thus stated that it cannot offer long distance service commercially until its long distance OSS systems are demonstrated through testing to have processing capabilities that are several orders of magnitude higher and more demanding than what Ameritech is willing or able to demonstrate for the electronic access to OSS systems that CLECs would receive. This dramatically underscores the inadequacy of Ameritech's OSS compliance efforts under Section 251(c).

In sum, Ameritech's entire course of conduct to date has been to generate for itself the "short-term rewards" that it claims to be impossible. By illicitly preventing AT&T from providing a UNE-based local service alternative throughout Michigan, and by denying local competitors the reliable and proven ability to process customer orders electronically (which it admits it is developing for itself), Ameritech has protected its statewide monopoly. Worse, Ameritech has implemented only arrangements that pose no substantial threat to that monopoly in order to contrive the claims (now made again in this application) that the requirements of Track A of § 271 are satisfied by three small CLECs that have limited operations in three Michigan cities and that do not desire and have not pursued all the checklist items. In short, Ameritech is now seeking other "short-term rewards" by requesting long-distance entry at a time when its own carefully considered conduct and foreclosure of meaningful local competition

would confer on it massive and anticompetitive advantages in local and long distance markets alike.

The foregoing facts are elaborated on in Part I of this brief. It demonstrates in more detail that Ameritech's application must be denied because of Ameritech's failure to implement the competitive checklist with respect to UNEs, OSS access, interim number portability, and other items. The Commission thus need not reach the other issues under Track A of § 271.

Nonetheless, this Brief will demonstrate that these other requirements also have not been satisfied. Part II shows that, while Ameritech claims that there are three small CLECs (Brooks Fiber, TCG, and MFS) that satisfy the "facilities-based competitor" requirement of § 271(c)(1)(A), these firms are neither "competing providers" of services to residential and business customers, nor firms that do so exclusively or predominantly over their "own facilities." Part III shows that Ameritech has failed to demonstrate that it would comply with the nondiscrimination and separation requirements of Section 272. Finally, Part IV explains why it would be directly contrary to the public interest to grant Ameritech entry into the interLATA market before it has opened its local markets to competition.

I. AMERITECH HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

Section 271 requires proof that the BOC "is providing" access and interconnection that includes "each" of the checklist items (Section 271(c)(2)(A) & (B)), and that it "has fully implemented the competitive checklist" (Section 271(d)(3)(A)(i)). Ameritech has not met this requirement. By its own admission (Br., p. ii), Ameritech has not yet actually provided any CLEC with unbundled switching, a critical checklist item. It also is not providing unbundled shared transport or AT&T's requested combination of unbundled elements known as the UNE-platform. These failures alone preclude approval of Ameritech's application.

Furthermore, even with respect to those items that Ameritech is attempting to provide, Ameritech has not demonstrated that it is providing them in a nondiscriminatory manner -- that is, on terms and conditions that are equal to what Ameritech enjoys, with certainty that Ameritech can provide each element in competitively significant volumes comparable to what it provides itself, and with proof that the quality of Ameritech's performance can be reliably measured and monitored. In particular, Ameritech is not providing nondiscriminatory access to its operations support systems. In addition, Ameritech has not proven that access to unbundled elements is available at cost-based rates, has not satisfied its interim number portability obligations, and has not yet fully implemented its interconnection agreement with AT&T on such basic checklist obligations as access to Ameritech's rights-of-way. Each of these omissions is an independent violation of Ameritech's statutory obligations, and further delays AT&T and others from bringing meaningful local competition to Michigan consumers.

A. Ameritech Is Not "Providing" Each Of The Checklist Items

Ameritech's application is defective on its face because Ameritech concedes that it is not now providing each of the 14 items on the competitive checklist. Given that Ameritech cannot yet meet the plain terms of the statute, Ameritech claims (Br., p. 19) that if a predominantly facilities-based provider with an approved agreement has not requested a checklist item, "provide" and "make available" should be understood as synonymous. As AT&T has elsewhere shown, there is no basis for Ameritech's statutory interpretation.[3]

Moreover, even accepting Ameritech's erroneous view, Ameritech still has failed to comply with it. As shown below, Ameritech has not yet made available crucial checklist items,

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[3] See Comments of AT&T in Opposition to SBC's Section 271 Application for Oklahoma, CC Docket No. 97-121, pp. 10-16 (May 1, 1997). Rather than repeat the argument here, AT&T incorporates by reference this portion of its prior submission.

such as unbundled switching, unbundled shared transport, and combinations of unbundled elements such as the UNE-platform, to carriers such as AT&T that have requested those items. Ameritech not only admits that these items are not being provided, but also concedes that its own ability to provide them is as yet untested and undetermined. Kocher Aff., ¶¶ 63-74. Given these admissions, Ameritech cannot be found to have made all the checklist items generally available. Its application is therefore premature on its face, and must be rejected. Moreover, for the additional reasons set forth below, Ameritech has fallen far short of meeting other checklist obligations.

B. Ameritech Has Not Fully Unbundled Its Transport Facilities

As the Commission noted in the Local Competition Order, "the 1996 Act requires BOCs to unbundle transport facilities prior to entering the in-region, interLATA market."[4] Specifically, incumbent LECs must "provide unbundled access to shared" as well as to "dedicated transmission facilities." Local Competition Order, ¶ 440 (emphasis added); see also 47 C.F.R. § 51.319(d)(2)(i) (incumbent LECs shall provide use of "interoffice transmission facilities shared by more than one customer or carrier"). In describing "the concept of network elements," the Commission explained that, although for some network elements (such as loops) carriers would purchase "exclusive rights to that element," for "other elements, especially shared facilities such as common transport," carriers would be "purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis." Local Competition Order, ¶ 258

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[4] Local Competition Order, ¶ 439 (citing § 271(c)(2)(B)(v) (BOC must provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services")); see also 47 U.S.C. § 271(c)(2)(B)(ii) (access to unbundled network elements must be "nondiscriminatory" and "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)").

(emphasis added). The Commission then set proxy-based rates for shared transmission facilities on a minutes-of-use basis. 47 C.F.R. § 51.513(4); Local Competition Order, ¶ 822 & n.1949.

Ameritech's obligation to provide nondiscriminatory access to unbundled shared transport could not be clearer. And initially, Ameritech agreed. Falcone/Sherry Aff., Attachment A. Only after the arbitration record closed in Michigan did Ameritech take the position that the Act does not require unbundled access to shared transport. That view has now been squarely rejected by the MPSC. Falcone/Sherry Aff., ¶ 25 (citing Order of Feb. 28, 1997). It has also been rejected by the Wisconsin Public Utilities Commission, and by the Illinois Hearing Examiner and the Illinois Commerce Commission staff as well. Id., ¶¶ 38, 42.

In short, no state regulatory body has yet accepted Ameritech's position, and it is in all events directly foreclosed by the Local Competition Order. One Ameritech witness has even admitted as much, stating that Ameritech's position rested on the view that "'neither this [Illinois] Commission, the FCC, nor the parties'" understood the significance of treating shared transport as an unbundled network element. Id., ¶ 40 (quoting Mr. Gebhardt). Thus, despite the MPSC's unambiguous order and Ameritech's subsequent written representation to the MPSC that the shared transport issue with AT&T was "resolved" by that Order, Ameritech persisted in refusing to alter its position, forcing AT&T to file a "Motion for an Order Compelling Immediate Compliance with the [MPSC's] February 28, 1997 Order," which remains pending. Id. ¶¶ 26-33.[5]

Ameritech's efforts to delay implementation of its obligations with respect to shared transport have no basis in the Act or the Local Competition Order. See generally

[5] AT&T has therefore raised this issue, as well as other violations, in a federal court complaint pursuant to Section 252(e)(6) of the Act. See AT&T Communications of Michigan, Inc. v. Michigan Bell Telephone Co., No. 97-60018 (E.D. Mich). Falcone/Sherry Aff., ¶ 33.

Falcone/Sherry Aff., ¶¶ 8-10, 52-63 (setting forth the reasons why the Commission properly concluded that shared transport is an unbundled network element). For example, it is obvious from the Local Competition Order that the Commission meant to distinguish between shared transport and dedicated transport. In Ameritech's approach, however, there is no meaningful distinction. Shared transport in Ameritech's view is simply an acknowledgement that Ameritech will not seek to restrict a CLEC's use of dedicated facilities obtained from Ameritech. As the Commission repeatedly made clear elsewhere in its Order, incumbent LECs are independently prohibited, by Section 251(c)(3), from imposing unreasonable restrictions on a CLEC's "use of" unbundled facilities. See, e.g., Local Competition Order, ¶¶ 264, 270, 292, 359, 440. Moreover, any such restriction on the use of dedicated transport would also violate the Commission's shared use rules.[6] Under Ameritech's novel interpretation, the Commission would have had no reason to unbundle "shared" transport in the first place.

Equally important, denying CLECs access to unbundled shared transport will destroy the viability of competitive entry via combinations of network elements such as the UNE-platform. Falcone/Sherry Aff., ¶¶ 43-49. Ameritech's response -- that competitors can choose to purchase the "service" of shared transport from Ameritech -- has no basis in the Act. Because shared transport is not a telecommunications service provided at retail to non-carrier subscribers, it is not subject to the resale provisions of the Act. If Ameritech were correct that shared transport is not a network element either, then LECs would seemingly have no legal obligation even to provide such transport, let alone to price it at reasonable rates. In effect, Ameritech's position

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[6] E.g., Report and Order, pp. 280-81, 283-84, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services And Facilities, FCC 76-641 (rel. July 16, 1976) ("tariff restrictions on resale and sharing are patently discriminatory"); Report and Order, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, FCC 80-607 Report and Order, pp. 172, 173 (rel. Dec. 18, 1980).

would provide Ameritech with ample discretion to set prices or availability to preclude competitive entry via any combinations of network elements that include shared transport.

Ameritech's refusal to offer unbundled shared transport is fatal to Ameritech's application, but the practical consequences of its position must not be overlooked. By persisting in refusing to offer unbundled shared transport -- despite a clear order from the MPSC to do so -- Ameritech has substantially delayed AT&T's ability to enter the market using a combination of network elements to provide service. Medlin Aff., ¶ 30. For example, not only did Ameritech refuse (until April, 1997) even to engage in meaningful discussions with AT&T regarding the provision of shared transport, it refuses to perform any of the software development needed to permit it to bill for shared transport in the event its attempt to overturn the Commission's rules is unsuccessful. Falcone/Gerson Aff., ¶¶ 31, 36-37. Such conduct in the face of the "powerful incentive" for cooperation that Section 271 relief ostensibly provides[7] underscores the importance of not granting interLATA authorization for Ameritech or any BOC until it has actually implemented its legal obligations.

C. Ameritech Has Not Fully Unbundled Local Switching

Ameritech has also refused to provide nondiscriminatory access to unbundled local switching. See § 271(c)(2)(B)(ii), (vi); 47 C.F.R. § 51.319(c). In particular, Ameritech proposes to restrict AT&T's ability (1) to use the switch to provide a full range of access services; (2) to obtain selective routing to AT&T's own operator services and directory assistance facilities; (3) to access the vertical features in the switch; and (4) to obtain unbundled

[7] See In the Matter of Petition for Declaratory Ruling Regarding US West Petitions to Consolidate LATAs in Minnesota and Arizona, DA97-767, ¶¶ 25, 28 (rel. April 21, 1997).

switching without having to pay twice for standard switching features or to fund Ameritech's noncompliance with the shared transport rules.

1. **Access Services:** Ameritech's refusal to permit AT&T to use the unbundled local switching element to provide originating or terminating access services to other carriers (for either outbound or inbound services) arose, once again, after the arbitration record had closed. Falcone/Sherry Aff., ¶ 68. Ameritech's view is that because Ameritech plans not to charge CLECs for switch usage associated with access services, it is entitled to keep the access revenues. Id., ¶¶ 69, 72. The only exception is for CLECs that purchase dedicated transport (or Ameritech's pseudo-shared transport) as well as unbundled switching. Not only is Ameritech's position illogical and virtually technically infeasible (see id., ¶ 74); it also denies CLECs access to the trunk port facilities that are part of the unbundled switch.

Ameritech's position is flatly inconsistent with the Act and the Commission's Orders. It is clear that CLECs are permitted to use network elements to provide any telecommunications service.[8] Indeed, in explaining the point, the Commission used as an example precisely the issue here: "Where new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or

[8] E.g., Local Competition Order, ¶¶ 342 ("carriers may request unbundled elements for purposes of originating and terminating toll services, in addition to any other services they seek to provide"); id. ¶¶ 292, 356; 47 C.F.R. § 51.307(c) (LECs shall provide "all of the unbundled network element's features, functions, and capabilities" for use in providing "any telecommunications service"); Order on Recons. ¶ 11 Docket 96-98 (rel. Sept. 27, 1996) (purchaser of "unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service for that end user").

terminating toll calls on those elements." Local Competition Order, ¶ 363 n.772 (emphasis added).

Accordingly, once a carrier has paid the appropriate cost-based rate for the unbundled switching element, it is the carrier -- and not Ameritech -- that decides which services to offer using that element. Ameritech simply does not have the option of choosing which features and functions to include in its ULS tariff and which to exclude.

2. **Customized Routing:** Ameritech has also failed fully to implement its obligation to unbundle the local switching element by refusing to provide one of the essential "capabilities" of the switch -- customized routing. Local Competition Order, ¶ 412. Customized routing to AT&T's OS/DA centers is particularly important to AT&T, because combining unbundled network elements with AT&T's operator services is a central part of AT&T's plan to offer consumers a distinctive, high-quality, competitive local service. The Commission expressly found that customized routing "is technically feasible in many LEC switches" and ordered LECs to provide it in "those switches that are capable of performing customized routing." Id., ¶ 418; see also ¶ 536 (requiring customized routing, where technically feasible, "to a competitor's operator services or directory assistance platform"). A LEC bears the burden of proving "by clear and convincing evidence" any claim that, for a particular switch, customized routing is not technically feasible. Id., ¶ 418; 47 C.F.R. § 51.315(e).

To implement fully this requirement, Ameritech must show that it is actually providing customized routing wherever technically feasible, and is fully able to provide it in quantities and quality equal to what it provides itself. Ameritech cannot make this showing. Here, too, it has not yet even offered what the Commission required.

In arbitration, Ameritech argued, despite the Commission's Order, that customized routing was not technically feasible. Falcone/Sherry Aff., ¶ 96. AT&T demonstrated, however, and the evidence is overwhelming, that just the opposite is true. Id., ¶ 97. As the commitments of Bell Atlantic and other RBOCs to provide this function make plain, customized routing is technically feasible at nearly all switches and reasonable accommodations can be made at the few remaining switches. Id., ¶¶ 104-115. Nevertheless, the Michigan PSC reversed the arbitration panel and relegated the provisioning of customized routing to the bona fide request ("BFR") process, stating that technical feasibility was a "legitimate concern." Id., ¶ 99.[9]

AT&T submitted a BFR to Ameritech for customized routing on December 24, 1996. Ameritech has subjected that request to repeated delays and hurdles, such as requests for resubmissions of the request and additional initial deposits. Id., ¶¶ 118-125. More fundamentally, Ameritech still has not produced anything but the most vague and useless response to that request, failing to explain adequately the basis for its claim that customized routing is technically infeasible in certain switches. Id., ¶ 124. As a result, some ten months after the Commission found customized routing to be feasible in many switches, Ameritech has turned the Commission's order on its head. It has refused to specify the switches or even switch types where it is technically infeasible to provide customized routing. There appears, moreover, to be no prospect for resolution in the near future. The Commission should make clear to Ameritech that, by using the BFR process to delay customized routing, Ameritech is only delaying the day of checklist compliance and further impeding competitive local entry.

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[9] AT&T has challenged that decision in federal court pursuant to Section 252(e)(6) of the Act. See supra p. 10 n.5. By contrast, in the parallel AT&T/GTE arbitration, the Michigan PSC stated that GTE "must provide specialized routing for OS/DA services in most instances" and that GTE "bears the clear burden of proof" of demonstrating infeasibility. Falcone/Sherry Aff., ¶ 99 (quoting MPSC order).

3. Switch Feature Request Process: Just as it has used the BFR process to delay the provision of customized routing, Ameritech has constructed a wholly unnecessary "Switch Feature Request" process to be applied whenever a CLEC wishes access to capabilities that are already resident in the switch but that Ameritech has not itself "turned on" and provided to its own retail customers. This new process requires an exceedingly cumbersome and wholly unnecessary sequence of steps that will take approximately 2 to 3 months from start to finish, largely subject to Ameritech's discretion. Falcone/Sherry, ¶¶ 82, 83. Moreover, whenever a CLEC seeks to activate features in more than five switches, a different (and presumably longer) response time will have to be negotiated. Id. There is no technical need for such a process (id., ¶ 84), but it will both delay CLECs' rollout of new features currently unavailable to customers and provide Ameritech with an unwarranted lead time to prepare a competitive response. Id., ¶ 85.

4. Additional Charges: Ameritech is also seeking to collect wholly inappropriate and unlawful additional charges from purchasers of the unbundled switch. First, Ameritech seeks to impose on CLECs recurring and non-recurring "common block" charges as part of its Centrex service. The purchaser of the unbundled switch, however, has already paid for all "features, functions, and capabilities" of the switch in the unbundled switch charge, see 47 U.S.C. § 153(29), and Centrex represents a set of those features. Falcone/Sherry Aff., ¶ 87. Second, Ameritech has proposed a "Billing Development Charge" that would be imposed on the purchaser of the unbundled switch for each end office it wants to serve. Ameritech has conceded, however, that the costs this charge seeks to recover have already been incurred, in large part, so that Ameritech could bill CLECs for its misguided version of shared transport.

Id., ¶ 88. Ameritech cannot impose additional charges on CLECs to pay for its attempt to evade Commission regulations.

D. Ameritech Is Violating The Act, And The Regulations Of This Commission And The Michigan Commission, By Refusing To Provide The UNE-Platform

While Ameritech's refusals to provide shared transport and the unbundled switch in conformance with the Act and the implementing rules of this Commission and the MPSC are unlawful in and of themselves, they arise in a broader context as well. Each has been part and parcel of Ameritech's broader resistance to providing the combination of unbundled network elements known as the UNE-platform.

AT&T's entry strategy is centered on using the UNE-platform, in conjunction with AT&T's operator services and directory assistance services, to create immediate competition to Ameritech's monopoly by providing consumers with higher-quality, innovative services at lower rates. No other entry vehicle presents the prospect for bringing those benefits to a broad range of customers. In particular, resale does not do so, because resellers are confined to providing the same services as Ameritech at prices that are based on Ameritech's retail prices, and because resale provides no vehicle for access competition. Falcone/Gerson, ¶ 14.

Ameritech opposes the UNE-platform precisely because it is the necessary linchpin for any broad opening of Ameritech's markets. But the elimination of Ameritech's (and other LECs') monopolies is a paramount goal of the Act, and Section 251(c)(3), and the Commission's implementing rules (see Local Competition Order, ¶¶ 328-341), expressly permit CLECs to "combine" network elements purchased at cost-based rates and use such combinations to provide competitive services. Ameritech has nonetheless refused to make the UNE-platform available, insisting on loading it down with provisions -- like the distorted definition of shared transport

and the restriction on the collection of access charges -- that would destroy the economics of using it.

Ameritech's overt defiance of the Act and the Commission's regulations is epitomized by the so-called "true-up" proposal set forth in Mr. Kocher's affidavit (¶¶ 65-77). Ameritech proposes to continue refusing to provide shared transport as a network element, and instead to charge for it at non-TELRIC prices, unless and until the Commission issues a reconsideration order reaffirming that shared transport is a network element -- at which point Ameritech states it will credit CLECs with the difference between the TELRIC price and Ameritech's higher price. This true-up is thus expressly and improperly based on the premise that Ameritech is not required to provide shared transport as a network element today.[10]

That premise is false (see Falcone/Sherry Aff., ¶¶ 8-10), and Ameritech has no right to collect unjustified and excessive charges from CLECs, and offer the UNE-platform only in a form in which it is not commercially viable, in the hope that the Commission will reverse a binding and effective order. Falcone/Gerson Aff., ¶ 38. Indeed, the presumptuousness of Ameritech's position is most vividly illustrated by its assertion that it will not even "begin" some of the necessary development work for the platform until such a reconsideration order is issued, and will not "implement" the results of that work until its appeals of that order are fully exhausted. See Kocher Aff., ¶ 78. Ameritech's readiness to act unlawfully by ignoring and disobeying pro-competitive rules while it attempts to have them reversed -- as it did in refusing to implement the MPSC's orders on intraLATA toll dialing parity (Puljung Aff., ¶¶ 27-29) --

[10] See Ameritech Brief, p. 40 n.41 (promising true-up if Commission "modif[ies]" its orders on reconsideration).

has repeatedly delayed or impeded competitive efforts in Michigan, and is continuing to do so today in this most critical context.

Ameritech also contends (Kocher Aff., ¶¶ 71, 72) that, although it is still refusing to provide the UNE-platform in the marketplace, it is currently engaged with AT&T in an "operational trial." But Ameritech has thus far refused to agree to any such trial. The only tests it has agreed to conduct with AT&T are highly limited exercises that cannot be used to determine operational readiness (Falcone/Gerson Aff., ¶¶ 22-26), and Ameritech has thus far resisted any broader testing program that could actually serve that objective. Id., ¶¶ 28, 29.

Specifically, Ameritech and AT&T are currently conducting only Phase I of a test. Phase I is testing the most basic of processes -- the ability to exchange orders over an interface and obtain selective routing of traffic to AT&T's OS/DA centers from a single Ameritech switch. Id., ¶ 24. Phase I will not test numerous aspects of providing the platform that will be critical to determining its operational readiness. Id., ¶ 26. Indeed, it speaks volumes that, 16 months after the enactment of the Act and 10 months after the release of the Local Competition Order, such a rudimentary test is being conducted for the first time.

Moreover, the scope of Phase II has not yet been defined, and the parties have significantly different proposals on the table. Falcone/Gerson Aff., ¶ 28. While AT&T is seeking a comprehensive test of operational readiness, Ameritech would continue to omit or scale down elements that are key to any genuine test and has not agreed to Service Readiness Testing. Id., ¶¶ 29-30. And in the course of negotiating over Phase II, Ameritech revealed for the first time its expectation that AT&T develop the software programming necessary to include the applicable line class codes in each EDI platform order -- a discriminatory requirement that,

if enforced, would further delay the onset of a meaningful trial. Id., ¶ 29; Bryant Aff., ¶¶ 53-55.

The fundamental realities of Ameritech's position thus remain unchanged. The UNE-platform continues to be unavailable in Michigan. Ameritech has not agreed even to test its operational readiness. There is thus no way to know whether Ameritech would be able to provide the platform -- let alone with sufficient quality and capacity -- even if Ameritech did an about-face and suddenly decided to comply with its obligations to offer it. Under these circumstances, Ameritech's suggestion that it should be granted Section 271 approval now, on the theory that it will fill in these enormous gaps later, must be rejected. Such a course would remove any incentive Ameritech would otherwise have to comply with the obligations it has thus far flouted, ensure massive additional delay and litigation, reward Ameritech's policy of defiance, and encourage other BOCs to act similarly. Most fundamentally, it would make a mockery of Section 271's central requirement that "full implementation" of the checklist precede Commission approval.

E. Ameritech Is Not Providing Nondiscriminatory Access To Its Operations Support Systems

Even if Ameritech were willing to provide everything else that the Act requires on fair and nondiscriminatory terms, the simple fact would remain that AT&T and other CLECs still lack the ability to order and provision services for customers through electronic interfaces with Ameritech's operations support systems ("OSS"). The importance of scrutinizing the extent to which CLECs are provided nondiscriminatory access to Ameritech's operations support systems cannot be overstated. As the Commission found in the Local Competition Order, "it is absolutely necessary for competitive carriers to have access to operations support systems functions in order to successfully enter the local service market." Local Competition Order, ¶

521 (emphasis added). And under Section 251(c)(3), an incumbent LEC must provide competitive carriers with electronic access to the incumbent's OSS that is at least "the same" as or "equal to" what it provides to itself. Local Competition Order, ¶¶ 518, 519, 523; see Pfau Aff., ¶ 10. Accordingly, the Commission ordered incumbent LECs to provide nondiscriminatory access by January 1, 1997. Local Competition Order, ¶¶ 316, 516-17, 525.

In its Second Order on Reconsideration, the Commission clarified that it would not take enforcement action against a non-complying LEC if, by January 1, 1997, the LEC had "establish[ed] and ma[de] known to requesting carriers the interface design specifications that the incumbent LEC will use to provide access to OSS functions." Second Order on Recons. ¶ 8 (CC Docket No. 96-98 (released Dec. 13, 1996)). The Commission reaffirmed, however, (1) that incumbent LECs must provide access to operations support systems on terms and conditions "equal to the terms and conditions on which an incumbent LEC provisions such elements to itself or its customers" (id. ¶ 9); (2) that the "actual provision" of such access "must be governed by an implementation schedule" (id. ¶ 8); and (3) that "incumbent LECs that do not provide access to OSS functions, in accordance with the First Report and Order, are not in full compliance with section 251." Id. ¶ 11 & n.32 (citing § 271(c)(2)(B)).

Ameritech has not fully implemented its essential OSS obligations. First, by not providing AT&T with specifications for ordering the UNE-platform, Ameritech has not complied even with the Commission's interim requirement that Ameritech "establish and make known" all interface specifications by January 1, 1997. Second, Ameritech has yet to provide AT&T with specifications sufficiently detailed to permit resale ordering of business services. Third, while Ameritech has made progress in making its OSS available to CLECs for very simple residential resale orders, as the Illinois Commerce Commission staff concluded in a brief filed

the same day as Ameritech's instant application with this Commission, "'there are still significant problems with Ameritech's OSS, including double-billing, rejected orders, and manual processing.'" Connolly Aff., ¶ 101 & Attachment 4. Fourth, Ameritech's own performance reports confirm that it is not yet providing nondiscriminatory access.

1. Platform: Despite repeated requests from AT&T beginning in May 1996, Ameritech was unwilling even to begin discussions about providing specifications for ordering the platform until late November. Bryant Aff., ¶¶ 38-39; Medlin Aff., ¶¶ 22-26. By that time, Ameritech had realized that it could destroy the viability of the platform by refusing to unbundle shared transport, and so Ameritech's proposal for ordering the platform assumed that the purchaser would be ordering dedicated transport for its platform customers. In January, 1997 and February 1997, AT&T submitted repeated orders for the UNE-platform and Ameritech refused to process them. Bryant Aff., ¶ 45. It was not until April, 1997, that Ameritech was willing even to begin discussing with AT&T how to order the UNE-platform that includes shared transport. Today -- six months after the January 1, 1997 deadline -- Ameritech still has not provided AT&T with specifications for such ordering. Id., ¶¶ 51, 56.

This failure alone is independent grounds to deny Ameritech's application. Moreover, as noted above, in a recent meeting regarding the platform trial, Ameritech stated for the first time that it expected AT&T to include the appropriate line class code for the customers' desired feature package in its order. Bryant Aff., ¶ 53. This demand is discriminatory, since Ameritech's own representatives are not required to include such codes in their orders. Id., ¶ 54. Moreover, this would require substantial development work by AT&T that will significantly delay AT&T's ability to place orders -- work that AT&T did not anticipate, given not only Ameritech's own business practice but also that Southern New England Telephone did